

THE ANTI-CASUAL JUSTICE

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One of the many perks of clerking for Justice Scalia was an invitation to his annual law-clerk reunion. For more than a quarter-century, the format was absolutely unchanged: a black-tie dinner in the West Conference Room of the Supreme Court on the first Saturday night in May. Champagne and sirloin. Spouses or announced fiancé(e)s only. Presentation of a dark green leather-bound volume containing a previous Term's Scalia opinions, accompanied by a dramatic reading of some of the highlights by one of the current clerks. Witty toasts, and a wry—if necessarily incomplete—description of the current Term by the Justice.

The reunion fit the man. In a society in which it is fashionable to be casual, Antonin Scalia was not. Not for him salespeople who call complete strangers by their first names or churchgoers who dress in shorts and flip-flops. I cannot imagine the Scalia reunion in the format of a backyard barbecue with the Justice flipping burgers. That is not to say that he was stuffy: to the contrary, he was warm and engaging. But he clearly believed, in matters both large and small, in formality and ritual. He was a Justice of the United States Supreme Court, and we had clerked for him there, so he was going to allow us to relive, if only for an evening a year, the pomp and circumstance of that institution.

Both in his life and in his jurisprudence, Antonin Scalia was an anti-casual man. In his mind, good living, like good judging, involved rigorous adherence to a code of rules: He believed, both as a man and as a judge, in what—at law school graduations—is called “the wise restraints that make men free.” I suspect he would have agreed wholeheartedly with the aphorism attributed to both Oscar Wilde and Orson Welles: “The enemy of art is the absence of limitations.” Artists, like judges, can only reach their full potential within a structured framework, as only limitations can prevent corrosive self-indulgence. Not for Justice Scalia a world in which the highest

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form of self-expression is feeling good about yourself or “doing your own thing.”

He understood full well, of course, that he was swimming against the tide, both in life and in law. But that did not discourage him; actually, I think it energized him. Like the monks of the Dark Ages, up in their turrets dutifully copying the great texts (while adorning them with colorful flourishes), he was the guardian of the code of rules that we call civilization. He would often return to chambers from the Justices’ Conference lamenting that he was “marginalized,” and indeed many of his greatest writings are in dissent. But his influence on the Supreme Court, and on American law more generally, cannot be overstated. He awoke the profession from the amnesia of the 1960s and 70s, and restored the primacy of traditional modes of legal analysis—call them textualism, originalism, or formalism.

It misses the point, thus, to dismiss Justice Scalia’s legacy—with a nod to F. Scott Fitzgerald—as nothing more than “boats against the current, borne back ceaselessly into the past.” He relished and embraced his role as a defender of orthodoxy. That is, I suspect, the root of his success as a Justice: there was a complete overlap between the way he lived and the way he judged. He was a protector of the sacred and timeless against the whims and fads of the day. He prized order and structure—the very values that, in a civilized society, the law generally strives to promote. And precisely because those values are timeless, so too is Justice Scalia’s legacy.